CRSD

IN THE HIGH COURT OF JUDICATURE AT BILASPUR

Single Bench

Miscllenious Appeal No. 1090 of 2003 (3)

IN THE MATTER OF :

APPELLANT / DEFENDANT : **MR. E. RAMENDRA RAO** aged 45 years, son of Late Shri E. Nageshwar Rao, resident of Link Road, Bilaspur (C.G.)

VERSUS

RESPONDENTS/ PLAINTIFFS :

1. **MR. BAJRANG LOHIA** aged 59 years, Son of Shri R.K. Lohia, resident of Sadar Bazar, Bilaspur (C.G.)

P. R. No. 2596/03
Presented by Shri Vivek Sood
dated 15.11.03

2. **MR. NATHMAL SHARMA,** Named Sole Abitrator, Evening Times, Nehru Chowk, Bilaspur (C.G.)

MEMORANDUM OF ~~FIRST~~ APPEAL UNDER SECTION 37(2)(b) OF THE ARBITRATION AND CONCILIATION ACT, 1996, AGAINST THE EXPARTE ORDER OF INJUCTION DATED 13.10.2003, PASSED BY THE RESPONDENT NO. 2 AS THE SOLE ARBITRATOR IN THE PURPORTED EXERCISE OF ITS POWERS UNDER SECTION 17 OF THE SAID ACT.

Aggreived by the exparte order of injunction dated 13.10.2003 passed by the Respondent No. 2 as the Sole Arbitrator in the purported exercise of his powers under Section 17 of the Arbitration and Conciliation Act 1996 (hereinafter called the Act) in the matter of alleged arbitral disputes between the Appellant and the Respondent No.1,

XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक M.A.No. 1090/03 सन् 200

(87)

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

18/11/2005

Shri B.P. Sharma, Counsel for the appellant.

Smt. Fouzia Mirza with Shri M.D. Sharma, Counsel for the respondent No.1.

Respondent No.2 in person along with his counsel Shri R.N. Jha.

Counsel for all the parties pray to hear the matter finally and decide.

Considered. Prayer is allowed.

Appellant and respondent No.1 entered an arbitral agreement on 10/05/2001 for settlement of their disputes. Relevant clause of the agreement reads as below:

> *"In case of any dispute, the matter will be settled by mutual discussions, failing which Shri Nathmal Sharma will be the arbitrator and his decision will be binding on both the parties"*

Section 21 of the Arbitration and Conciliation Act, 1996 (for short, "the Act") reads as below:

> ***"21. Commencement of arbitral proceedings.-*** *Unless otherwise agreed*

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

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मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित — 2 —	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

by the parties, the arbitral proceedings in respect of a particular dispute commence on the date on which a request for that dispute to be referred to arbitration is received by the respondent."

Admittedly, no written notice in consonance with Section 21 of the Act, has been served on the appellant. Apparently, in absence of compliance of Section 21 of the Act arbitral proceeding did not commence in the present case, therefore, arbitrator does not acquire any jurisdiction to pass any order under Section 17 of the Act.

In the result, the impugned order appears to be without jurisdiction at this stage, therefore, liable to be dismissed with a direction that both the parties to the arbitral agreement may raise dispute/ objections before the arbitrator in accordance with law.

With the aforesaid direction, the impugned order is set aside and accordingly the appeal stands disposed of.

Certified copy as per rules.

Sd/-
V.K. Shrivastava
Judge

raju

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